

# Joint Tenancy: How Not to Avoid Probate!

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*Article by: Phil Craig*

One of my favorite stories is about the woman who came in for a consultation about an estate plan.

She told me she didn't think she needed a living trust because when her husband had died, all of their assets had been held in joint tenancy and all she had to do was record a few affidavits along with his death certificate, and "poof" she was now the owner, with no probate.

She thought this was so great, she had gone ahead and added her daughter to all of her real estate as a joint tenant. She actually prepared and recorded the deeds (she was a retired real estate broker). I looked them over and sure enough, the daughter was now on title with the mother as a joint tenant.

But now came the real reason she had come to see me. Her daughter had gotten involved with a new man who was one of those protestors who believe the Internal Revenue Code (and the Internal Revenue Service) is unconstitutional. In protest, they had decided to stop paying income taxes or filing income tax returns.

Mom was now worried about the deeds she had recorded and wanted to have her daughter's name removed. Could I help?

Well, the first suggestion was to have the daughter sign and record deeds giving back the joint tenancy interest the mother had given. Mom had thought of that, but when asked, the daughter told her mother that she was worrying too much and had nothing to worry about. She refused to sign the deeds giving back the title.

The point? Joint tenancy sure is easy to create, but sure is hard to end.

Once you put your child (or anyone) on title, that piece of property is considered to be part owned by them and is subject to the claims of their creditors.

Even if the daughter wasn't a tax protestor, if she was in a car accident and was at fault, the creditor could make a claim against her interest in the property.

Joint Tenancy can "Kill" your Will.

Then there is the story about the man who had remarried after his first wife died. He wanted to leave part of his estate to his children (from his first marriage) and part to his new wife.

He and the new wife loved each other so much they decided to put all their assets in "joint tenancy" (she didn't have much of anything, so it was his assets that were changed).

Lo and behold, he died unexpectedly from a heart attack and his children now wanted to receive what they felt they had coming from his estate.

However, those of you who've been through my multi-media course know that joint tenancy is a very unique form of holding title to assets or property. The moment one of the joint tenants dies, his or her interest in the asset ends and the remaining surviving joint tenant is now the sole owner.

So, regardless of what the man's will said, the joint tenancy holding "killed the will" since the moment the husband died, his interest in all of his assets died with him.

That left nothing in his estate to leave to his children.

Sad, but true.

I recommended a malpractice action against the lawyer who set it all up, but it turns out they had done it themselves, using forms.

Good luck and until next time,

Phil Craig

P.S. Feel free to forward this on to any friends.

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